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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/614,188	SUTHERLAND ET AL.	
	Examiner	Art Unit	
	REBECCA C. SLOMSKI	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04/07/08.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,4-13,15-34 and 39-42 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,4-13,15-34 and 39-42 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 08 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 39, 40, 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims contain the phrase "...due to one of thermal drift of from at least one of the filters...". The word "of" seems to be a mistyping on the applicant's part. For the purposes of examination, the claim limitation is understood to read "...due to one of thermal drift or from at least one....". Clarification is necessary.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims **1, 4-13** and **15-34** are rejected under 35 U.S.C. 103(a) as being unpatentable over Murpher et al (US 5,8642,541) in view of Sailor et al (US 2003/0146109) and further in view of Ridgeway et al (US 5,377,008).

3. With respect to claim **1**, Murphy et al. discloses an optical fiber long period sensor comprising:

- Obtaining a first sample from the environment and introducing the first sample to at least one detection module (Col.6, L 66-67, L 36-38, sample = chemical or biological agent, detection module = reactive coating on exposed active sites)
- Filtering the first sample through at least a first filter (Col.6, L 66-67)
- The first filter is a grating and contains at least one detection molecule for binding the target agent thereto (Col.6, L 33-51)
- Measuring optical property of the first filter after filtering the first sample there through (Col.7, L 5-12)

However, Murphy et al. fails to disclose a second filter without detection molecules, comparing the first filter measurements to the second, and that the first and second filters are porous Bragg gratings.

Ridgway et al. discloses an integrating optical compensative refractometer apparatus comprising:

- A second filter that contains no detection molecules for binding the target agent thereto (Col.8, L 10-28)
- Comparing the measured optical property of the first filter to the measured optical property of the second filter to determine the presence of the target agent (Col.8, L 10-28)

Sailor et al discloses a porous thing film time-varying reflectivity analysis comprising:

- The filter is a porous Bragg grating (P.0021)

It would have been obvious to one of ordinary skill in the art to include the reference filter of Ridgway since it is well known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the two paths, leaving the measured result "only the change due to specific binding." (Ridgway, Col. 8, L 26-27)

Additionally, it would have been obvious to use the porous Bragg grating of Sailor et al. since the porous film allows for detection of a range of molecule sizes and is simple yet sensitive. (Sailor et al., P.0012)

However, Murphy et al. fails to disclose measuring an optical property of a third filter which is not exposed to the first sample, the third filter comprising a porous Bragg grating and comparing the measured optical property of the third filter to the measured optical property of the first and second filters to determine a presence of spurious signals caused by the environment.

It would have been obvious to one of ordinary skill in the art to measure a third optical grating that has not been exposed to the sample, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Col. V. Bemis Co., 193 USPQ 8. It would have been obvious to have a grating that does not contact the sample and to compare it with measurements from the first and second filters since it is well known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the environment and measurement system. This is evidenced by Col. 4, L 15-35 of Ohtsuka et al. US Patent # 6,791,691, Col. 2, L 6—67 of Rosenberger et al. US Patent # 6,781,696 and Col.14, L 3-5 of Arnold et al. US Patent #6,713,516.

4. With respect to claim 10, Murphy et al. discloses an optical fiber long period sensor comprising:

- A transfer system for adding the sample to a working fluid (Col.1, L 27-29)
- A dispenser system for introducing the working fluid including the sample to a detector system (Col.6, L12-14, L 66-67)
- A detector system comprising at least a first optical grating, wherein the first optical grating contains at least one detector molecule for binding the at least one target agent thereto (Col.6, L 33-51, 66-67)
- A measuring device for measuring an optical response of the first optical grating after contact with the working fluid, including the sample (Col.7, L 5-12)

However, Murphy et al. fails to disclose a collector system, a second filter without detection molecules and a second measuring device, a third optical grating not in contact with the sample, a third measuring device and a processor for comparing the first filter measurements to the second and the third filter, and that the first, second and third filters are porous Bragg gratings. ***see below

Ridgway et al. discloses an integrating optical compensative refractometer apparatus comprising:

- A second filter that contains no detection molecules for binding the target agent thereto (Col.8, L 10-28)
- A second measuring device for measuring an optical response of the second optical grating after contact with the working fluid, including the sample (Col.8, L 10-28)

- A processor for comparing the measured optical property of the first filter to the measured optical property of the second filter to determine the presence of the target agent (Col.8, L 10-28)

Sailor et al discloses a porous thing film time-varying reflectivity analysis comprising:

- The filter is a porous Bragg grating (P.0021)

It would have been obvious to one of ordinary skill in the art to include the reference filter of Ridgway since it is well known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the two paths, leaving the measured result "only the change due to specific binding." (Ridgway, Col. 8, L 26-27)

Additionally, it would have been obvious to use the porous Bragg grating of Sailor et al. since the porous film allows for detection of a range of molecule sizes and is simple yet sensitive. (Sailor et al., P.0012)

Additionally, it would have been obvious that there was a collector system for collecting the sample from an environment since one of ordinary skill in the art would understand that the sample must be collected somehow from somewhere.

It would have been obvious to one of ordinary skill in the art to measure a third optical grating that has not been exposed to the sample with a third measuring device, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Col. V. Bemis Co., 193 USPQ 8. It would have been obvious to have a grating that does not contact the sample and to compare it with measurements from the first and second filters since it is well known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the environment and measurement system. This is evidenced by Col. 4, L 15-35 of Ohtsuka et al. US Patent #

6,791,691, Col. 2, L 6–67 of Rosenberger et al. US Patent # 6,781,696 and Col.14, L 3-5 of Arnold et al. US Patent #6,713,516.

5. With respect to claims **4** and **15**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claims 1 and 10 above. However, Murphy et al. in view of Sailor et al. and Ridgway et al. fail to disclose forming the gratings by holographically polymerizing a polymer-dispersed liquid crystal material. It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to holographically polymerize a polymer-dispersed liquid crystal material since it was well known in the art to form a grating in this manner (see Domash et al. Col.4, L 13-27 for example and admitted prior art on page 23, paragraph [0083].)
6. With respect to claim **5**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 1 above. However, Murphy et al. in view of Sailor et al. and Ridgway et al. fail to disclose the grating is fabricated for apodization. It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to use the grating for apodization since it was well known in the art to use apodization for combining two optical paths (i.e. first and second filter) (see Domash et al. Col.6, L 9-15 for example) Additionally, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be used, if the actual use is not part of the claimed method in which the apparatus is employed does not differentiate the claimed apparatus from prior art.
7. With respect to claim **6**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 1 above. Additionally, Murphy et al. discloses:

- A working fluid (sample) with an added sample (specific biological agents) and introducing it to the at least one detection module (Col.1, L 26-29 and Col.6, L 66-67)

8. With respect to claim 7, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claims 1 and 6 above. However, Murphy et al. in view of Sailor et al. and Ridgway et al. fail to disclose recirculating the working fluid to obtain a second sample from the environment.

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to recirculate the fluid since doing so would minimize the amount of the sample fluid needed for the detection.

9. With respect to claim 8, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 1 above.

Additionally, Murphy et al. discloses:

- Measuring the optical property of the first filter includes determining a refractive index of the first filter (Col.1, L 66- Col.2, L 5)

However, Murphy et al. fails to disclose determining the change in the refractive index of the second filter but for reasons stated above, this would be obvious since using a second filter as a reference is well known in the art and it would be understood that whatever measurements are carried out on the first filter need to be duplicated on the second filter.

10. With respect to claim 9, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 1 above.

However, Murphy et al. fails to disclose storing data of the measured properties indicative of the presence of the target agent.

It would have been obvious to one of ordinary skill in the art to store the data measured since it is well known in the art and storing the data would put it in a usable form for future use. (Example see Sailor et al. P.0017)

11. With respect to claim **11**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim **10** above.

However, Murphy et al. fails to disclose a data storage system for storing data indicative of the presence of the at least one target agent. *** see below

It would have been obvious to one of ordinary skill in the art to store the data measured since it is well known in the art and storing the data would put it in a usable form for future use. (For example see Sailor et al. P.0017)

12. With respect to claim **12**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claims **10** and **11** above. *** see below

However, Murphy et al. fails to disclose a transmission system for transmitting data indicative of the presence of at least one target agent to an analysis location.

It would have been obvious to one of ordinary skill in the art to transmit the data to an analysis location since it is well known in the art that analysis would enable the data to be in a usable form for future use. (For example see Sailor et al. P.0016)

13. With respect to claim **13**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim **10** above. However, Murphy et al. in view of Sailor et al. and Ridgway et al. fail to disclose recirculating the working fluid to obtain a second sample from the environment.

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to recirculate the fluid since doing so would minimize the amount of the sample fluid needed for the detection.

14. With respect to claim **16**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 1 above.

However, Murphy et al. in view of Sailor et al. and Ridgway et al. fail to disclose prior to holographic polymerization the polymer dispersed liquid crystal material comprises a number of specific elements. It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to holographically polymerize a polymer-dispersed liquid crystal material from these specific elements since it was well known in the art to form a grating in this manner (see Domash et al. Col.4, L 13-27 for example and admitted prior art on page 23, paragraph [0083].)

15. With respect to claim **17**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 10 above. However, Murphy et al. in view of Sailor et al. and Ridgway et al. fail to disclose the measuring devices are photodetectors.

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived that the measuring devices are photodetectors rather than the sensors named by Murphy et al. since photodetectors are art recognized equivalents to optical sensors.

16. With respect to claim **18**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 10 above.

Additionally, Murphy et al. discloses:

- A first inlet reservoir integrally connected to a micro-fluidic channel to provide the sample to the optical grating (Figure 4)

However, Murphy et al. fails to disclose a second inlet reservoir. *** see below

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to have a second reservoir integrally connected to a second micro-fluidic channel for

providing the working fluid to a second optical grating as disclosed above with respect to a reference measurement being well known in the art.

17. With respect to claim **19**, Murphy et al. in view of Sailor et al. and Ridgway et al. discloses all of the limitations as applied to claim 10 above.

Additionally, Murphy et al. discloses:

- A light source optically coupled to a waveguide for providing light to the at least a first optical grating and the at least a second optical grating (Figure 4)

18. With respect to claim **20**, Murphy et al. discloses an optical fiber long period sensor comprising:

- A first inlet reservoir for receiving a working fluid containing the sample therein (Figure 4, tube labeled “sample, wash, and regenerative solution”)
- A first micro-fluidic channel integrally connected to the first inlet reservoir (Figure 4, unlabeled shaded line between tube and contacting chamber)
- A first optical grating physically integrated with the first micro-fluidic channel, wherein the first optical grating includes at least one detector molecule for binding the target agent within the sample thereto (Col.6, L 33-51, 66-67)

However, Murphy et al. fails to disclose a second inlet reservoir, a second micro-fluidic channel, a second optical grating without detection molecules, a third optical grating isolated from the working fluid and at least one reservoir physically integrated with the first and second micro-fluidic channels for removing the working fluid containing the sample and that the filters are porous Bragg gratings. *** see below

Ridgway et al. discloses an integrating optical compensative refractometer apparatus comprising:

- A second micro-fluidic channel integrally connected to a reservoir (Figure 1A, 124)
- A second optical grating that contains no detection molecules for binding the target agent thereto (Col.8, L 10-28, Figure 1A, 118)

Sailor et al discloses a porous thing film time-varying reflectivity analysis comprising:

- The filter is a porous Bragg grating (P.0021)

It would have been obvious to one of ordinary skill in the art to include the reference filter of Ridgway since it is well known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the two paths, leaving the measured result "only the change due to specific binding." (Ridgway, Col. 8, L 26-27).

Additionally, it would have been obvious to have a second reservoir since the second micro-fluidic channel necessitates somewhere to draw the sample fluid from.

Additionally, it would have been obvious to use the porous Bragg grating of Sailor et al. since the porous film allows for detection of a range of molecule sizes and is simple yet sensitive. (Sailor et al., P.0012)

Additionally, it would have been obvious to have at least one outlet reservoir physically integrated with the first and second micro-fluidic channels for removing the working fluid containing the sample from the detector module since it is inherent that the tested fluid would need to be removed to somewhere after the detection has been carried out.

It would have been obvious to one of ordinary skill in the art to measure a third optical grating that is isolated from the working fluid, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Col. V. Bemis Co., 193 USPQ 8. It would have been obvious to have a grating that does not contact the sample and to compare it with measurements from the first and second filters since it is well

known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the environment and measurement system. This is evidenced by Col. 4, L 15-35 of Ohtsuka et al. US Patent # 6,791,691, Col. 2, L 6—67 of Rosenberger et al. US Patent # 6,781,696 and Col.14, L 3-5 of Arnold et al. US Patent #6,713,516.

19. With respect to claims **21, 22, and 23**, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claim 20 above. However, Murphy et al. fails to disclose a substrate formed on a first material and the other parts formed on a second material.

Sailor et al. discloses porous thin film time varying reflectivity analysis comprising:

- A substrate formed on a first material/silicon (P.0023, silicon)
- A second material/silicon dioxide formed on at least part of the substrate, wherein the first optical grating are formed in the second material (P.0023, silicon is oxidized to form gratings (pores))

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to form the optical long period sensor of Murphy et al. out of two materials as in Sailor et al. since different properties are beneficial for the functions of the substrate and the gratings, yet by having them formed from the same piece of original material allows them to be inherently connected, avoiding possible assembly error.

Additionally, it would have been obvious to one of ordinary skill of the art to form the inlet, micro-fluidic channels, and outlet reservoir from the same material since they should understandably be located in proximity to the grating and need to be connected thereto. By forming them of the same piece of material as the gratings, accuracy is preserved, avoiding possibly assembly error.

20. With respect to claim **24**, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claims 20 and 21 above.

Additionally, Murphy et al. discloses:

- A waveguide formed of a third material and optically integrated with the first optical grating (Col.7, L 49-63)

21. With respect to claim **25** and **33**, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claims 20, 21, 24 and 30 above.

However, Murphy et al. fails to disclose the third material is silicon oxynitride.

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to use silicon oxynitride for the waveguide since it has been held to be within the general skill of a worker in an art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

22. With respect to claims **26** and **27**, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claims 20, 21 and 24 above.

Additionally, Murphy et al. discloses:

- Waveguide is optically integrated with the at least first optical grating (Figure 4, waveguide = optical fiber, optical grating = coated lpg sensing element)
- A light source optically coupled to the waveguide (Figure 4, light source = broadband source, waveguide = optical fiber)
- A first detector located in an optical path of the waveguide and an optical path of the first optical grating (Figure 4, photodetector = optical spectrum analyzer)

Ridgway et al. discloses an integrated optical compensating refractometer apparatus comprising:

- The waveguide is split into a first arm that is optically integrated with the at least first optical grating and a second arm that is optically integrated with the second optical grating (Figure 7A, Abstract)
- A second photodetector located in the optical path of the waveguide and an optical path of the second optical grating (Abstract)

It would have been obvious to one of ordinary skill in the art that the optical spectrum analyzer of Murphy et al. is an art recognized equivalent to a photodetector.

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to split the waveguide to provide light to both the first grating and the second grating as a reference, since it is well known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the two paths, leaving the measured result "only the change due to specific binding" and accuracy would be preserved by providing light from the same source to both gratings. (Ridgway, Col. 8, L 26-27)

23. With respect to claim 28, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claims 20, 21, 24 and 26 above.

However, Murphy et al. fails to disclose a third optical grating located in a third arm of the waveguide, wherein the third optical grating does not contact the sample.

It would have been obvious to one of ordinary skill in the art to measure a third optical grating that has not been exposed to the sample with a third measuring device, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Col. V. Bemis Co., 193 USPQ 8. It would have been obvious to have a grating that does not contact the sample and to compare it with measurements from the first and second filters since it is well known in the art to use a reference for measurements for increased accuracy due to the cancellation of effects that are common to the environment and

measurement system. This is evidenced by Col. 4, L 15-35 of Ohtsuka et al. US Patent # 6,791,691, Col. 2, L 6—67 of Rosenberger et al. US Patent # 6,781,696 and Col.14, L 3-5 of Arnold et al. US Patent #6,713,516.

24. With respect to claim **29**, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claims 20, 21, 24 and 26 above.

However, Murphy et al. fails to disclose the materials that comprise the optical gratings before holographic polymerization.

It would have been obvious to one of ordinary skill in the art to have these certain materials comprising the optical grating before holographic polymerization since it has been held to be within the general skill of a worker in the art to select a known material on the bases of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

25. With respect to claims **30, 31, and 32**, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claim 20 above.

Additionally, Murphy et al. discloses:

- A substrate formed of a first material (first material = fiber optic waveguide, 10)
- A second material formed on at least part of the substrate having a waveguide formed therein of a third material (second material = cladding 30, third material = core 20)
- A fourth material formed on at least part of the second material wherein the first micro-fluidic channel and the first optical grating, are formed in the fourth material (Figure 1, micro-fluidic channel = core 20, grating, 40)

However, Murphy et al. fails to disclose the inlet reservoir, the second micro-fluidic channel, the second optical grating, and the outlet reservoir formed in the fourth material. Additionally, Murphy et al. fails to disclose the specific materials.

Sailor et al. discloses porous thin film time varying reflectivity analysis comprising:

- A substrate formed on a first material/silicon (P.0023, silicon)
- A second material/silicon dioxide formed on at least part of the substrate, (P.0023, silicon is oxidized)

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to form the inlet reservoir, the second micro-fluidic channel, the second optical grating and the outlet reservoir from the same material as the first micro-fluidic channel and the first optical grating since a reference channel necessitates that everything be the same with the sample channel, down to the material with which it's made in order to be accurate, and it is understood that the inlet and outlet should be in proximity to the grating so therefore forming it from the same material makes it inherently connected, avoiding possible assembly error.

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to use silicon oxynitride for the third material and polymer for the fourth material since it has been held to be within the general skill of a worker in an art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

26. With respect to claims 34, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claim 30 above.

However, Murphy et al. fails to disclose the fourth material is a polymer.

Sailor et al. discloses porous thin film time varying reflectivity analysis comprising:

- A substrate formed on a first material/silicon (P.0023, silicon)
- A second material/silicon dioxide formed on at least part of the substrate, (P.0023, silicon is oxidized)

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to form the inlet reservoir, the second micro-fluidic channel, the second optical grating and the outlet reservoir from the same material as the first micro-fluidic channel and the first optical grating since a reference channel necessitates that everything be the same with the sample channel, down to the material with which it's made in order to be accurate, and it is understood that the inlet and outlet should be in proximity to the grating so therefore forming it from the same material makes it inherently connected, avoiding possible assembly error.

It would have been obvious to one of ordinary skill in the art at the time the invention was conceived to use silicon oxynitride for the third material and polymer for the fourth material since it has been held to be within the general skill of a worker in an art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416. Additionally, it is well known in the art to comprise waveguides from polymers due to the low loss capabilities as evidenced by Bach et al. US Publication 2003002778.

27. With respect to claims **39, 40, 41 and 42**, Murphy et al. in view of Ridgway et al. and Sailor et al. discloses all of the limitations as applied to claims 1, 10, and 20 above.

However, Murphy et al. fails to disclose the third optical grating is used to determine a presence of spurious signals caused by the environment comprising fluctuations due to one of thermal drift or from one of the filters and light sources changes.

It would have been obvious to one of ordinary skill in the art at the time of the invention that the third optical grating, for reference measurement without the sample, would determine the presence of spurious signals caused by the environment since this is well known in the art as a method for referencing. The first two filters account for spurious signals caused by the binding, however, the third filter is for reference, to select a baseline signal. This baseline signal would

result in being able to calculate out things such as ambient light and room temperature effects.

This is evidenced by Rosenberger US Patent #6,781,696, Column 2, L 65-67.

***It should be noted that the functional recitations in the above claims do not hold any patentable weight because they are in narrative form. In order to be given patentable weight, a functional recitation must be expressed as a “means” for performing the specified function, as set forth 35 USC 112 6th paragraph and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In re Fuller, 1929 C.D. 172; 388 O.G. 279. The functional recitations are as follows:

- “a collector system for collecting the sample from an environment” (Claim 10)
- “a transfer system for adding the sample to a working fluid” (Claim 10)
- “a dispenser system for introducing the working fluid to a detector system” (Claim 10)
- “at least one detector molecule for binding the target agent” (Claim 10)
- “a first measuring device for measuring an optical response” (Claim 10)
- “a second measuring device for measuring an optical response” (Claim 10)
- “a third measuring device for measuring an optical response of the third optical grating” (Claim 10)
- “a processor for comparing the measured optical response... to determine the presence of the at least one target agent” (Claim 10)
- “a data storage system for storing data indicative of the presence of the at least one target agent” (Claim 11)
- “a transmission system for transmitting the data indicative of the presence of the at least one target agent” (Claim 12)

- “a recirculation system for receiving the working fluid... and removing the sample therefrom...” (Claim 13)
- “a first micro-fluidic channel for providing the working fluid....” (claim 18)
- “a second micro-fluidic channel for providing the working fluid...” (claim 18)
- “a light source...for providing light to the at least a first optical grating...” (claim 19)
- “a... reservoir for receiving a working fluid ...therein” (Claim 20)
- “at least one detector molecule for binding the target agent” (Claim 20)
- “at least one reservoir...for removing the working fluid containing the sample in order to re-use the working fluid with another sample” (Claim 20)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REBECCA C. SLOMSKI whose telephone number is (571)272-9787. The examiner can normally be reached on Monday through Thursday, 7:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on 571-272-2059. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Gregory J. Toatley, Jr./
Supervisory Patent Examiner, Art Unit 2877
28 April 2008

Rebecca C. Slomski
Patent Examiner

rcs